

1                                    **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2                    In the Matter of the Mortgage Broker License Application of:

No. 07F-BD041-BNK

3                    **ADVANTAGE MORTGAGE LENDING CO (FN)**  
4                    2616 Fox Circle  
5                    Walnut Creek, CA 94596

**SUPERINTENDENT'S FINAL  
DECISION AND ORDER**

6                                    Petitioner.

7                    The Superintendent of Financial Institutions (the "Superintendent") having reviewed the  
8                    record in this matter, including the transcript of the January 26, 2007 administrative hearing, and the  
9                    Administrative Law Judge Decision attached and incorporated herein by this reference, adopts in part  
10                    and modifies in part the Administrative Law Judge's Findings of Fact and Conclusions of Law and  
11                    rejects the recommended Order as follows.

12                                    **FINDINGS OF FACT**

13                    The Superintendent adopts the Administrative Law Judge's Findings of Fact Paragraphs 1 –  
14                    6, and 11 – 21.

15                    The Superintendent modifies Findings of Fact Paragraphs 7 – 10 and 22 – 23.

16                    New paragraph 7 shall read as follows:

17                    7. Mr. Krelle testified that he instructed his processor to contact the California Department  
18                    of Corporations ("CDC") to obtain the required letter. His processor called CDC and  
19                    explained the issue. Shortly thereafter, Mr. Krelle claims to have received a letter from  
20                    CDC dated June 15, 2004, sometime between September and October 2006, enclosing a  
21                    California Finance Lenders and/or Brokers license and indicating that he was the broker  
22                    of record for Advantage in California. This letter is Exhibit 4.

23                    Reasoning: New paragraph 7 adds clarification to and more accurately reflects Mr. Krelle's  
24                    testimony and the hearing record regarding the date of the letter he claims to have  
25                    received in the Fall of 2006 after submitting his license application in September 2006.  
26                    (See R.T. pp. 12-14 and Exhibit 4).

27                    ...  
28

1 New paragraph 8 shall read as follows:

2 8. Mr. Krelle testified that the letter that he received was a modified version of the license  
3 confirmation letter that CDC initially issued to Advantage on June 15, 2004 when CDC  
4 delivered his original license. The original June 15, 2004 letter is Exhibit 7. Because of  
5 the central role that letter plays in the determination of this matter, it is necessary to  
6 reproduce some of its contents herein.

7 Reasoning: New paragraph 8 adds clarification and more accurately reflects Mr. Krelle's  
8 testimony and the hearing record. Other than Mr. Krelle's testimony there is nothing in the record  
9 indicating Mr. Krelle's receipt of the altered letter from CDC, such as a cover letter or a post marked  
10 envelope dated sometime in 2006.

11 New paragraph 9 shall read as follows:

12 9. The original license confirmation letter is addressed to Advantage to the attention of Mr.  
13 Krelle dated June 15, 2004, and states, in pertinent part:

14 "Dear Licensee: Enclosed is your California Finance Lenders and/or Brokers  
15 license." See Exhibit 7.

16 The letter that Mr. Krelle subsequently obtained in October 2006 is an exact  
17 reproduction of the original June 15, 2005 letter, except that the first line was  
18 altered as follows:

19 "Dear Licensee: Enclosed is your California Finance Lenders and/or Brokers  
20 license. The Broker of Record for License #605-2792 is SCOTT KRELLE." See Exhibit 4

21 Reasoning: New paragraph 9 adds clarification and more accurately reflects the record and  
22 the contents of Exhibits 4 and 7.

23 New paragraph 10 shall read as follows:

24 10. In accordance with Ms. Moreno's instructions, Mr. Krelle submitted the modified June  
25 15, 2004 CDC letter, Exhibit 4, to the Department as proof of his three years of  
26 experience as a mortgage broker. Other than Mr. Krelle's testimony that he received  
27 Exhibit 4 from CDC. There is no other evidence, direct or circumstantial, that the  
28 altered letter, Exhibit 4 actually originated with CDC and was sent to Mr. Krelle.

1        Reasoning: New paragraph 10 adds clarification and more accurately reflects Mr. Krelle's  
2 testimony and the hearing record. Other than Mr. Krelle's testimony there is nothing in the record  
3 indicating mr. Krelle's receipt of the altered letter from CDC, such as a cover letter dated sometime  
4 in 2006 or a post marked envelope.

5        The Superintendent modifies Findings of Fact paragraph 22, by adding the following excerpts  
6 from the Reporter's Transcript:

7            Q: So Exhibit 7 is the official record of the Department of Corporations for the State of  
8 California?

9            A: Correct.

10          A: And Exhibit 4 is not an official record?

11          A: Correct.

12          Q: And Exhibit 4 is an altered copy of Exhibit 7?

13          A: Correct.

14          Q: And did you not authorize in any way the change of Exhibit 4?

15          A: Correct.

16          Q: And Exhibit 4 couldn't have been changed in any respect by the Department of  
17 Corporations?

18          A: Correct

19          Q: Do you know if you talked to a woman by the name of - -?

20          Mr. RABY: What was your secretary's - - processor's name?

21          Mr. KRELLE: Lisa Ferguson.

22          Q: BY MR. RABY: Do you know if you ever talked to Lisa Ferguson about changing  
23 Exhibit 7 so it would look like Exhibit 4?

24          A: No. I never talked to anyone about that.

25          Q: Okay, Lisa Ferguson apparently is a processor that works at Advantage here in  
26 Arizona. Any questions about anyone trying to alter Exhibit 7 would be referred to you,  
27 I assume.

28          A: They would - -

1 Q: You're saying it just wouldn't happen?

2 A: Well, there would be no need because we wouldn't do this.

3 Q: Okay.

4 A: And if anybody insisted upon it, more than likely it would be transferred to me and  
5 they would be told no, you can't do that. But I can't imagine that anyone would call  
6 asking us to alter a document.

7 Q: Would there be some kind of mechanisms whereby you could flat out change a  
8 document completely if you were asked to?

9 A: No.

10 Q: You would just have to -- if there was some problem, you would just have to start  
11 from scratch and do what was required to correct the problem?

12 A: Yeah. We would - - there would not be any reason to change the document in this  
13 fashion. We would never have done this because this wording, broker of record, is not a  
14 term that we use here at the department. So we would never put this term on any  
15 document under our letterhead. This is not a Department of Corporations term. R.T. p.  
16 45 lines 3-25; p. 46 lines 1-25, p. 47, lines 1-2)

17 Reasoning: The additional excerpt from the transcript setting forth the testimony of Ms.  
18 Speight shows the credibility of the witness who is unbiased and has nothing to gain from the  
19 outcome of the hearing and establishes undisputed evidence that Exhibit 4 did not originate from  
20 CDC. This undisputed, unbiased testimony contradicts the incorrect and unsubstantiated assumption  
21 that Exhibit 4 originated with CDC in Judge Martin's recommended decision. There is no credible,  
22 direct or circumstantial evidence that the altered letter, Exhibit 4, came from CDC.

23 The Superintendent modifies paragraph 23 to read as follows:

24 23. On cross examination, Ms. Speight acknowledged that she had only spoken to four of  
25 the eight employees that she supervises regarding the letter, and, as to those employees, her  
26 questions were very general (i.e., whether they were familiar with Advantage). However,  
27 Ms. Speight spoke to Suprenda Singh specifically about the two letters, Exhibits 4 and 7.  
28

1        Reasoning: The modification clarifies the actual testimony of Ms. Speight and more  
2 accurately reflects the depth and breadth of Ms. Speight's knowledge of the circumstances  
3 surrounding the altered letter (Exhibit 4) and supports the lack of authenticity of the altered letter,  
4 Exhibit 4. (R.T. pp. 56-57)

5        The Superintendent modifies the Findings of Fact by adding the following new paragraphs  
6 24 - 31.

7        24. Mr. Krelle did not produce his "processor" who he claims was the contact with CDC to  
8 testify regarding Exhibit 4, the altered letter. He did not identify the "processor" by name in  
9 his testimony. Further, Mr. Krelle did not provide credible, non-hearsay evidence to satisfy  
10 his burden of proof. (R.T. pp. 12 - 16)

11        25. Richard Fergus received the official record of the CDC from that state agency, the  
12 unaltered June 15, 2004 letter, Exhibit 7. The Department received the altered document,  
13 Exhibit 4 from Scott Krelle, not from CDC. (R.T. p. 24 lines 11-25; p. 25, lines 1- 12; p. 26,  
14 lines 14-24.)

15        27. Krelle introduced no evidence or documentation of who altered the original June 15,  
16 2004 letter, Exhibit 4. Mr. Krelle could not establish the authenticity of Exhibit 4 because he  
17 could not establish it originated at CDC. (R.T. pp. 12-16)

18        28. Ms. Speight's knowledge of information technology is sufficient to do her job and to  
19 recognize an altered document that could not possible be generated by her department.

20        Q: Okay. How knowledgeable and familiar are you with computer software?

21        A: I'm familiar with it.

22        Q: And how knowledgeable are you with computer security systems?

23        A: Well, I'm not an IT person, but I'm knowledgeable enough to be able to do my job.

24        Q: If you only spoke to four out of eight employees and didn't check any computers or  
25 your fax logs and you're not an IT person that isn't IT knowledgeable in computer  
26 software and computer security systems, can you be 100 percent positive that this - both  
27 of these letters did not come out of your office?

28        A: Yes.

1 Q: And how can you be 100 percent positive that both letters did not come out of that  
2 office?

3 A: Because the system that generates the letter that we're referring to is a very old  
4 DOS-based system that is an antique and it's not compatible with anything else we have.  
5 And that's why only one person has access and no one else can have access to it. And  
6 that's why it takes major programming to be able to make any sort of change to it. And  
7 anyone who needs to go in and make a change has to be an expert at - - in computers, has  
8 to be a programmer to be able to make a simple change. As I said, just changing the  
9 name of the governor each year or with every new governor is a major change. You  
10 know, it takes a lot of programming to do. So adding a sentence to the letter is not a  
11 simple thing to do. So, you know, I'm sure that this did not happen here. (R.T. p. 52,  
12 lines 13 - 25, p. 53. lines 1-20)

13 29. It is credible that no one from the CDC would take a letter dated June 15, 2004 and alter  
14 it in October of 2006 at the request of a licensee. The testimony under oath of the CDC's  
15 personnel that the June 15, 2004 letter would not and could not be modified is undisputed  
16 evidence that the altered letter (Exhibit 7) did not originate with the CDC. (R.T. pp. 37-67)

17 30. It is undisputed that Mr. Krelle submitted an altered document to the Department. It is  
18 undisputed that Krelle cannot provide any direct or circumstantial, non-hearsay evidence that  
19 someone from the CDC provided him with the altered letter, Exhibit 4.

20 31. Mr. Krelle's testimony is not credible because he is biased by his desire for a license and  
21 the need to satisfy his burden of proof. His testimony that he personally did not alter the  
22 original June 15, 2004 letter may be believable but this evidence alone is insufficient to  
23 satisfy his burden to prove that he did not submit an altered document to the Department,  
24 misrepresenting it as originating from CDC and therefore imputing his honesty, truthfulness  
25 and good character.

6 Reasoning: New Paragraphs 24 - 31, more accurately reflect the hearing record which is  
27 void of any credible evidence that the altered letter, Exhibit 4, could have possibly originated with  
28

1 CDC. The undisputed evidence consisting of the exhibits, the testimony of Richard Fergus and the  
2 testimony of the CDC employees established that Mr. Krelle did not received Exhibit 4 from CDC.

### 3 CONCLUSIONS OF LAW

4 The Superintendent adopts the Administrative Law Judge's Conclusions of Law paragraphs 1  
5 and 2.

6 The Superintendent modifies Conclusions of Law paragraph 3 by deleting the last sentence  
7 and inserting a new last sentence so that paragraph 3 now reads as follows:

- 8 3. In this case, the Department based its denial of Advantage's application solely on A.R.S.  
9 § 6-905(A)(2), concluding that Mr. Krelle's submission of an altered document in  
10 support of the Application, regardless of whether he was the person who altered it, was  
11 evidence that Mr. Krelle was not a person of honesty, truthfulness and good character.  
12 Having carefully considered all evidence, the Superintendent finds that Mr. Krelle and  
13 Advantage Mortgage failed to satisfy its burden to prove that the denial of the license  
14 should be reversed.

15 The Superintendent rejects Conclusions of Law paragraphs 4 – 7.

16 The Superintendent modifies the Conclusion of Law by adding new paragraphs 4 – 7 as  
17 follows:

- 18 4. There is no credible evidence that the State of California provided an altered June 15,  
19 2004 letter to Mr. Krelle in October 2006 as a means to verify he was responsible for the  
20 broker activities at Advantage. In fact, there is credible evidence that personnel in the  
21 CDC would not send the modified letter. (Exhibit 4)
- 22 5. According to testimony of CDC employees, the computer would not permit the creation  
23 of a letter as reflected in Exhibit 4. The personnel CDC also indicated that the  
24 terminology in the modified letter is not familiar to them or consistent with California  
25 statutes.
- 26 6. The notion that a licensing agency would take a letter that is over two years old, modify  
27 it to add exactly the language the Department is seeking, and issue it to a licensee is  
28 absurd, especially in light of the unequivocal evidence from CDC to the contrary.

1 Witnesses Spreicht and Tran are the most credible witnesses because they have no bias  
2 or interest in the outcome of the proceeding.

- 3 7. The fact that Exhibit 4 originated with Krelle and the true unaltered June 15, 2004 letter  
4 originated with CDC is uncontradicted evidence that the altered document came from  
5 Krelle. Krelle's credibility is questionable because he is bias and has an interest in the  
6 outcome of this proceeding. (i.e. the issuance of a license); he provides not direct or  
7 circumstantial non hearsay evidence to substantiate his claim of innocence.

8 Reasoning: The new conclusions of law replace Judge Martin's conclusions because Judge  
9 Martin disregards the obvious bias, double hearsay evidence presented by Mr. Krelle. Judge Martin's  
10 conclusions are based upon on erroneous finding of fact that Exhibit 4 came from CDC, when such a  
11 finding is not supported by the hearing record.

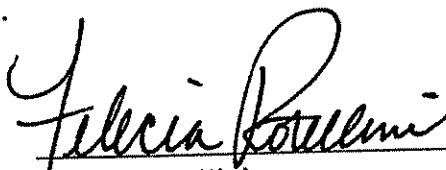
12 **ORDER**

13 IT IS ORDERED that Advantage Mortgage Lending Co's (FN) license application is denied.

14 **NOTICE**

15 The parties are advised that, pursuant to A.R.S. § 41-1092.09, this Order shall be final unless  
16 Petitioners submit a written motion for rehearing no later than thirty (30) days after service of this  
17 decision. The motion for rehearing or review must specify the particular grounds upon which it is  
18 based as set forth in A.A.C. R20-4-1219. A copy shall be served upon all other parties to the  
19 hearing, including the Attorney General, if the Attorney General is not the party filing the claim of  
20 error. In the alternative, the parties may seek judicial review of this decision pursuant to A.R.S. § 41-  
21 1092.08(H).

22 DATED this 12 day of April, 2007.

23   
24 Felecia Rotellini  
25 Superintendent of Financial Institutions

26 ORIGINAL filed this 12 day of  
27 April, 2007, in the office of:

28 Felecia Rotellini



1 Superintendent of Financial Institutions  
2 Arizona Department of Financial Institutions  
3 ATTN: June Beckwith  
2910 North 44th Street, Suite 310  
Phoenix, Arizona 85018

4 COPY of the foregoing mailed/hand delivered  
5 This same date to:

6 Daniel Martin, Administrative Law Judge  
7 Office of Administrative Hearings  
1400 West Washington, Suite 101  
Phoenix, AZ 85007

8 Craig A. Raby, Assistant Attorney General  
9 Office of the Attorney General  
1275 West Washington  
10 Phoenix, AZ 85007

11 Richard A. Fergus, Division Manager  
12 Licensing and Consumer Affairs  
Arizona Department of Financial Institutions  
2910 N. 44th Street, Suite 310  
13 Phoenix, AZ 85018

14 Robert D. Charlton, Assistant Superintendent  
15 Arizona Department of Financial Institutions  
2910 N. 44th Street, Suite 310  
16 Phoenix, AZ 85018

17 AND COPY MAILED SAME DATE by  
18 Certified Mail, Return Receipt Requested, to:

19 Advantage Mortgage Lending Co (FN)  
20 Scott Krelle, C.E.O.  
4805 E. Thistle Landing Dr., Suite 110  
Phoenix, AZ 85044

21 Advantage Mortgage Lending Co (FN)  
22 Scott Krelle, C.E.O.  
2616 Fox Circle  
Walnut Creek, CA 94596

23 D. Jay Ryan  
24 Attorney at Law  
4150 W. Northern Avenue  
25 Phoenix, AZ 85051-5765  
Attorney for Petitioner

26  
27 By:   
28

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Mortgage Broker  
License Application of:

No. 07F-BD041-BNK

**ADVANTAGE MORTGAGE LENDING  
CO (FN)**

2616 Fox Circle  
Walnut Creek, CA 94596

**ADMINISTRATIVE  
LAW JUDGE DECISION**

Petitioner.

**HEARING:** January 26, 2007. The record closed on February 19, 2007.

**APPEARANCES:** Assistant Attorney General Craig Raby represented the Arizona Department of Financial Institutions. Petitioner Advantage Mortgage Lending Co (FN) appeared through its chief executive officer, Scott Krelle.

**ADMINISTRATIVE LAW JUDGE:** Daniel G. Martin

Advantage Mortgage Lending Co (FN) ("Advantage") appealed the Arizona Department of Financial Institutions' decision to deny Advantage's application for a mortgage broker license. Based on the evidence of record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Order:

**FINDINGS OF FACT**

1. On September 5, 2006, Advantage submitted an application for a mortgage broker license (the "Application") to the Arizona Department of Financial Institutions (the "Department"). See Exhibit 1. On October 26, 2006, Advantage supplemented the Application solely to indicate that Advantage Mortgage Lending Co is a fictitious name (FN). See Exhibit 3.

2. Scott Krelle is Advantage's chief executive officer. See Exhibit 1. Mr. Krelle indicated on the Application that he would serve as the Responsible Individual for Advantage in Arizona.

Office of Administrative Hearings  
1400 West Washington, Suite 101  
Phoenix, Arizona 85007  
(602) 542-9826

1           3.     Among other things, the Responsible Individual on an Arizona mortgage  
2 broker license must have not less than three years' experience as a mortgage broker  
3 (or equivalent lending experience) during the five years immediately preceding the  
4 application.

5           4.     In order to demonstrate the requisite three years of mortgage experience,  
6 Mr. Krelle submitted with the Application (i) a letter from his former employer, The  
7 Lending Team, explaining his position and duties, and (ii) a copy of Advantage's  
8 California Finance Lenders License (no. 605-2792), under which Advantage has been  
9 authorized to make mortgage loans in California for the past three years.

10          5.     Joanne Moreno, one of the Department's licensing technicians, conducted  
11 the initial review of Advantage's application.

12          6.     In the course of her review, Ms. Moreno determined that the California  
13 Finance Lenders License did not constitute sufficient evidence of Mr. Krelle having the  
14 requisite three years of mortgage experience because the license was issued to  
15 Advantage, and there was nothing to indicate that Mr. Krelle was the broker of record.  
16 Ms. Moreno therefore instructed Mr. Krelle to obtain a letter indicating that he had been  
17 the broker of record for Advantage in California.

18          7.     Mr. Krelle instructed his processor to contact the California Department of  
19 Corporations ("CDC") to obtain the required letter. His processor called CDC and  
20 explained the issue. Shortly thereafter, Mr. Krelle received a letter from CDC indicating  
21 that he was the broker of record for Advantage in California.

22          8.     The letter that Mr. Krelle received was a modified version of the license  
23 confirmation letter that CDC initially issued to Advantage on June 15, 2004. Because of  
24 the central role that letter plays in the determination of this matter, it is necessary to  
25 reproduce some of its contents herein.

26          9.     The original license confirmation letter is addressed to Advantage, to the  
27 attention of Mr. Krelle, and states, in pertinent part:

28                 Dear Licensee:

29                 Enclosed is your California Finance Lenders and/or Brokers license.

30                 See Exhibit 7.

1 The letter that Mr. Krelle subsequently obtained is an exact reproduction of the  
2 original letter, except that the first line was altered as follows:

3 Dear Licensee:

4 Enclosed is your California Finance Lenders and/or Brokers  
5 license. The Broker of Record for License #605-2792 is SCOTT  
6 KRELLE.

7 See Exhibit 4.

8 10. In accordance with Ms. Moreno's instructions, Mr. Krelle submitted the  
9 CDC letter to the Department as proof of his three years of experience as a mortgage  
10 broker.

11 11. Even with the modification identifying Mr. Krelle as the broker of record,  
12 Ms. Moreno still had questions as to whether the letter was sufficient, so she transferred  
13 Advantage's file to Richard Fergus, the Department's Division Manager for Licensing  
14 and Consumer Affairs, for further review.

15 12. Although Mr. Fergus had some familiarity with California licensing issues,  
16 he was not familiar with CDC, and therefore was unsure whether Advantage's California  
17 Finance Lenders License authorized it to conduct mortgage lending. Mr. Fergus made  
18 several attempts to contact CDC, and eventually reached Patricia Speight, CDC's  
19 Special Administrator for finance and lending. Ms. Speight asked Mr. Fergus to read to  
20 her the letter the Department had received from Mr. Krelle, and Mr. Fergus did so. At  
21 hearing, Mr. Fergus described the sequence of events that followed:

22 And so I started reading the letter that I had to her. She  
23 stopped me and asked if I could fax over a copy of the letter that I  
24 had. So I faxed over the letter that Mr. Krelle had provided to us so  
25 that she could review it.

26 That same day I had – she had contacted me back and  
27 informed me that that was not the letter that they had in their  
28 records as being submitted or provided to Mr. Krelle.

29 Reporter's Transcript of Proceedings ("R.T."), at 24.  
30

1           13. Subsequent to being informed by Ms. Speight about the discrepancy in  
2 the CDC letter provided by Mr. Krelle, Mr. Fergus received from Ms. Speight the original  
3 letter that, according to Ms. Speight, was on file with CDC.

4           14. Mr. Fergus was concerned about the discrepancy between the two CDC  
5 letters, and asked Mr. Krelle to provide him with a written explanation as to what had  
6 transpired.

7           15. On November 13, 2006, Mr. Krelle provided Mr. Fergus with the following  
8 explanation:

9           Joanne Moreno informed me that my California Finance Lender  
10 License was not sufficient evidence of 3 years mortgage  
11 experience because the license was issued to my company and it  
12 didn't say on the website that I was the broker of record. She told  
13 me I needed a letter stating that I was the broker of record.

14           I called the representative that had recently completed my 2006  
15 Audit for California Jason Tran, and asked if he could provide this  
16 information and he referred me to the Los Angeles office. I also  
17 emailed a representative and asked for the request. As I was  
18 awaiting a response via email, I had my processor call the Los  
19 Angeles office at (866) 275-2677 and explain to them what I  
20 needed. We did not get the person's name who helped us but they  
21 said they would add the verbiage, "The Broker of Record for  
22 License #605-2792 is SCOTT KRELLE". They added this verbiage  
23 to my original license confirmation letter which was sent in June  
24 2004 and sent to us. I then forwarded this to you.

25           I have made every attempt to get an explanation for the two letters  
26 from the California Department of Corporations but have had no  
27 success. I spoke with Jonathan Tran and because the letter was  
28 written by him in June 2004, and he no longer works in the  
29 licensing department, neither he nor any employee currently  
30 working in the licensing department has the authority to explain the  
situation in writing.

I did NOT, in any way, alter or change any document. I will sign  
and get an affidavit notarized to this effect. I have been in the  
mortgage business since 2003, I am licensed in several different  
states, and I have a perfect record. I have never engaged in any  
fraudulent or misleading behavior, I have never had a consumer  
complaint, never been barred from a lender or bank, nor have I

1 ever been denied a bond. I have built my company on honesty and  
2 integrity and would never jeopardize my company, my reputation,  
3 or my word.

4 I am very sorry for the confusion between the two letters. I attest to  
5 the fact that this was the letter that was given to us. . . .

6 Exhibit 9a.

7 16. Subsequent to his receipt of Mr. Krelle's letter of explanation, Mr. Fergus  
8 again sought clarification from CDC. On this occasion, Ms. Speight advised him that  
9 she had spoken to Jonathan Tran, who stated that he had not changed the document.

10 17. By letter dated November 22, 2006, the Department, through Mr. Fergus,  
11 advised Advantage that its application had been denied. The Department wrote:

12 Pursuant to Arizona Revised Statutes Sections [sic] 6-905(A)(2),  
13 your application for a mortgage broker license is hereby denied.  
14 Specifically, Scott Krelle provided a copy of his California Finance  
15 Lenders License to show his experience in mortgage lending. The  
16 copy of the letter dated June 15, 2004 provided by Mr. Krelle has  
17 been altered to include the following statement "The Broker of  
18 Record for License #605-2792 is SCOTT KRELLE." A copy of the  
19 original letter issued by the California Department of Corporations  
20 does not include the above statement.

21 Exhibit 13.

22 18. A.R.S. § 6-905(A)(2) provides:

23 The superintendent may deny a license to a person or suspend or  
24 revoke a license if the superintendent finds that an applicant or  
25 licensee:

26 \* \* \*

27 2. Has shown that he is not a person of honesty, truthfulness  
28 and good character.

29 19. The gravamen of the Department's determination was that regardless of  
30 whether Mr. Krelle had altered the CDC letter, that letter had been altered, and in  
submitting it to the Department Mr. Krelle had demonstrated that he was not a person  
of honesty, truthfulness, or good character.

20. On November 29, 2006, Mr. Krelle appealed the Department's decision to deny Advantage's application. See Exhibit 14. This matter was thereafter referred for hearing to the Office of Administrative Hearings, an independent state agency.

21. The hearing convened on January 26, 2007. The record closed on February 19, 2007 following submission of the Reporter's Transcript of Proceedings.

22. Ms. Speight testified at hearing as follows:

Q. Is Exhibit 4 the official record of your department?

A. No.

Q. Has Exhibit 4 been altered?

A. Yes.

Q. In what respect has the exhibit been altered?

A. In the first paragraph, the second sentence has been added.

Q. And that would be —

A. The broker of record for license number 605-2792 is Scott Krelle.

Q. Did you alter —

A. That does not belong there.

\* \* \*

Q. Did you alter this document

A. No.

**Q. Can the document be altered?**

A. No.

Q. Why is it that the document can't be altered?

A. This document is generated from a separate database that is generated – one that we generate the license itself. The two of them are generated together and we don't have separate access to that system.

Q. So there would be no way you could change this letter even if you wanted to?

A. Right. We can't go back and change it.

1 Q. I don't know if I quite understand that. Is it that your  
2 computer won't allow you to change it or a policy won't allow  
3 you to change it or why can't you change it?

4 A. The computer won't allow us to change this or policy. So  
5 none of those things could allow us to change it.

6 Q. All right. Could someone have received authority to make  
7 that change you referred to on this Exhibit 4?

8 A. No.

9 Q. Could someone in your office have made the change to  
10 Exhibit 4 that you referred to?

11 A. No.

12 Q. Now, are you saying that unequivocally?

13 A. Yes.

14 Q. How can you know that someone else in the office maybe by  
15 mistake didn't make the change and add that sentence to  
16 Exhibit 4?

17 A. Because for this particular – you know, it's not possible. It's  
18 a separate system that does this and it – we need to  
19 reprogram our computer to do it. So a simple thing like  
20 changing the governor's name on the document is a major  
21 task to do. It requires the program to be changed.

22 R.T., at 40-42.

23 23. On cross examination, Ms. Speight acknowledged that she had only  
24 spoken to four of the eight employees that she supervises regarding the letter, and, as  
25 to those employees, her questions were very general (*i.e.*, whether they were familiar  
26 with Advantage).

27 24. Mr. Krelle credibly denied that he had altered the CDC letter.

### 28 CONCLUSIONS OF LAW

29 1. In this proceeding, Advantage bears the burden to prove, by a  
30 preponderance of the evidence, that the Department's denial of its application for a  
mortgage broker license should be reversed. See A.R.S. § 41-1092.07(G) and Arizona  
Administrative Code R2-19-119.



1           2.     A preponderance of the evidence is "such proof as convinces the trier of  
2 fact that the contention is more probably true than not." Morris K. Udall, ARIZONA LAW  
3 OF EVIDENCE § 5 (1960).

4           3.     In this case, the Department based its denial of Advantage's application  
5 solely on A.R.S. § 6-905(A)(2), concluding that Mr. Krelle's submission of an altered  
6 document in support of the Application, regardless of whether he was the person who  
7 altered it, was evidence that Mr. Krelle was not a person of honesty, truthfulness and  
8 good character.<sup>1</sup> Having carefully considered all of the evidence, the Administrative  
9 Law Judge concludes that the Department's decision must be reversed.

10          4.     The weight of the credible evidence demonstrated that Mr. Krelle, acting  
11 on instruction from Ms. Moreno, requested that the State of California provide him with  
12 documentation that identified him as Advantage's broker of record in California, and  
13 that this is precisely what happened. Yet, according to the Department's analysis, Mr.  
14 Krelle should be faulted for relying on that document because it was obviously altered.  
15 The question in this regard is, why should Mr. Krelle have questioned the alteration  
16 when it came from a state agency at his request and in support of the proposition for  
17 which he requested it? There are no indicia in the evidence that the manner in which  
18 Mr. Krelle obtained the altered letter was such that he should have suspected any  
19 impropriety; he requested that the State of California provide him with a particular  
20 statement, and it did so.

21          5.     The Administrative Law Judge has carefully considered Ms. Speight's  
22 testimony, and disagrees with the Department's assertion that such testimony is  
23

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24 <sup>1</sup> See R.T. at 71-72 (closing argument by counsel for the Department):

25           "Let's say for argument sake there's some possibility [the letter] could have been changed  
26 [by someone at CDC]. In terms of burden of proof that Advantage Mortgage has to get  
27 the license, I think it's overwhelming that they can't overcome the testimony that [Ms.  
28 Speight] provided. This is testimony right from the horse's mouth. Eliminates any  
29 confusion and completely justifies the decision Mr. Fergus made, which was, as we  
30 indicated in opening, that an altered document was provided to the department. Forget  
who changed the document. An altered document was provided to the Department to  
justify the experience of Mr. Krelle on behalf of Advantage. And that simply can't take  
place, especially in the area of things like mortgage broker, mortgage banker, escrow  
companies.

1 dispositive of the outcome of this appeal. Ms. Speight testified unequivocally that the  
2 change could not be made. Yet, her testimony is defeated by the very fact that the  
3 change *was made*. Ms. Speight may wish to believe that her staff is incapable of  
4 making such changes, but she failed to conduct a reasonable investigation into whether  
5 this is in fact true (as stated above, she only interviewed four of her eight employees,  
6 and as to those four only asked very general questions), and therefore her testimony on  
7 this issue is not persuasive.<sup>2</sup>

8 6. In view of the foregoing, the Department's conclusion that Mr. Krelle's  
9 submission of the altered document reflects adversely on his honesty, truthfulness, and  
10 good character cannot stand. To the contrary, Mr. Krelle's record (as reflected in  
11 Exhibit 9a) appears to be impeccable.

12 7. The Department did not assert that any other cause existed to deny the  
13 Application. Therefore, in view of the conclusion herein that Advantage did not violate  
14 A.R.S. § 6-905(A)(2), Advantage has met its burden to prove that the Department's  
15 decision to deny the Application should be reversed.

#### 16 ORDER

17 The Department's decision to deny Advantage's September 5, 2006 application  
18 for a mortgage broker license is reversed. On the effective date of this Order, the  
19 Department shall grant the application and issue an Arizona mortgage broker license to  
20 Advantage.

21 Done this day, March 7, 2007.

22  
23  
24 

25 Daniel G. Martin  
26 Administrative Law Judge  
27  
28

29 <sup>2</sup> The Administrative Law Judge also observes that Ms. Speight's testimony lacked credibility at a  
30 general level. Her insistence that a simple word processing function was "not possible" defies common  
sense and is inconsistent with the level of computer literacy that exists in today's society.

1 Original transmitted by mail this 8 day of March, 2007, to:

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3 Arizona Department of Financial Institutions  
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7 By Chris Fickledu